

Nortel Networks – Allocation Trial – Summary of September 23, 2014

On the second day of closing submissions, the Courts heard the remainder of the UKPC's closing submissions followed by the closing submissions of the U.S. Interests.

The UKPC primarily focused on the reasons a pro rata distribution is appropriate and rebutted arguments made by other parties. The UKPC addressed implementation of the pro rata theory including the finalization of claims globally, as well as the treatment of intercompany claims and guarantees. In addition, the UKPC provided submissions regarding whether legal principles constrained the adoption of pro rata allocation, including the application of the U.S. decision in Owens Corning.

The U.S. Interests provided their submissions next, with the U.S. Debtor arguing first. The U.S. Debtor argued that Nortel was not a Canadian corporation at the time of insolvency, but a multinational company with intellectual property being created in other countries, including in the United States. The U.S. Debtors argued their interpretation of the Master Research and Development Agreement in rebutting the Ownership theory of the CCC and the Canadian Debtor and Monitor. Essentially, the U.S. Debtors argued that certain factual matrix evidence should be considered in interpreting the ownership rights of the various parties. The U.S. Debtors also considered the theories of the other parties and argued that the Courts should adopt the U.S. Interests' theory as it is the only one that provides parties with the fair market value for the assets that were sold. In responding to questions from the Courts regarding the recoveries of parties, the U.S. Debtors also provided submissions comparing the nature of the claims against the Nortel Debtors, specifically the deficit of the Canadian registered pension plans and the claim of the Pension Benefits Guarantee Fund, as compared to the U.S. and U.K. claims.

The Official Committee of Unsecured Creditors of the U.S. Debtors provided closing submissions next. Their submissions addressed the pro rata theory and the reasons the Courts should not adopt the theory, claiming that it has no legal basis, none of the Nortel Estates support it, and that it does not allocate to the Estates the fair market value of the assets they surrendered in the sales.

The Ad Hoc Committee of Bondholders also provided brief closing submissions regarding creditor expectations in arguing that a pro rata allocation could not be implemented.

Closing submissions will continue on September 24, 2014, with two indenture trustees providing brief submissions and all the parties having the opportunity to reply.